It is argued in support of the rule in the present case that the contract ought not to be considered as still existing as a measure of recovery, inasmuch as the defendants, who themselves have terminated it, would then be allowed to take advantage of it in defeating the plaintiff's recovery for work and materials expended of which the defendants have had the benefit. But it seems a much stronger argument that, had the contract been completed, only the contract price would have been paid, and that when the work is stopped a real saving is effected to the plaintiff, for he is thereby relieved from further expenditures which, under a completed contract must be a net loss to him. If he himself had terminated the contract, the contract price would be the limit of recovery. Accordingly, on principle and authority, it is desirable not to follow the rule suggested in the principal case.

INTERSTATE RENDITION. — The case of *Eaton* v. *State of West Virginia*, 91 Fed. Rep. 760 (C. C. A. Fourth Cir.), presents a question regarding interstate extradition of criminals not often directly raised. The plaintiff in error was indicted for arson in West Virginia. Requisition was made to the Governor of Illinois when the culprit was found and he was surrendered to the demanding State. In an application for a writ of *habeas corpus* his contention was that he was not present in West Virginia when the crime was committed and he was not, therefore, a fugitive from justice of that State. In proceedings in error the writ was refused, on the ground that when the warrant was issued in Illinois it was enough if merely presumptive proof of the relator's flight from West Virginia was given. The case involves a discussion of the nature and the extent of proof of escape which a demanding State ought to furnish in asking for the surrender of an offender.

In the absence of decisions squarely on the point, it is said on the one side that the State making requisition ought to give to the executive from whom surrender is desired evidence proving the fact of escape. In *Ex parte Reggel*, 114 U. S. 642, this view is clearly supported, on the ground that anything short of proof of actual flight might create an injustice by requiring surrender, on the strength of official records, of one whom the executive knew to be not in fact a fugitive from the demanding State. On the other side, it is contended that submission of records of formal indictment, with an affidavit, is sufficient ground on which to base the presumption of actual flight. Where this view prevails, the relator cannot overthrow the presumption as to his escape by merely denying the truth of the records. *Ex parte Swearingen*, 13 S. C. 74; *Hibler* v. *The State*, 43 Tex. 197 (Sup. Ct.).

Owing to the importance of the question as affecting the rights of citizens, the greatest freedom from technicalities is desirable. But a proper regard for the accuracy of official records must also be maintained. By adopting the course suggested in the principal case, both ends are kept in view, and, so far as practicable, brought together. It recognizes the common-law view of crimes as local in character by holding that the presentations of the indictment and affidavit is sufficient *prima facie* evidence of actual flight of the one demanded. Due credence is therefore given to these papers of the demandant. The executive on whom requisition is made is given presumptive proof upon which it is justified in issuing a warrant for arrest and surrender, while the relator may rebut

that presumption against him by showing in some court of the State where the warrant is issued that the facts are not consistent with the records upon faith of which the executive acted. The rights of the citizen are thus protected by giving him the opportunity to vindicate himself while the validity of official proceedings is upheld until conclusive error is shown.

DANA *v.* VALENTINE FOLLOWED IN ENGLAND. — In *Dana* v. *Valentine*, 5 Met. 8, the plaintiff owned certain vacant lots next to the defendant's slaughter-house, which caused offensive smells in the vicinity. The court held in a *dictum* that the plaintiff had an adequate remedy at law to prevent the defendant's gaining a prescriptive right to maintain the nuisance although the plaintiff could show no actual damage. And this *dictum* is generally followed in the United States. *Farley* v. *Gate City Gas Co.*, 31 S. E. 193 (Ga.). Some fifty years later the English Court of Appeal in Chancery had the same question presented to it, and gave a different answer. *Sturges* v. *Bridgman*, 11 Ch. D. 852. There the defendant, a confectioner, had been accustomed to use mortars in his kitchen for more than twenty years. The plaintiff then extended the rear of his house so that it adjoined the defendant's kitchen, and for the first time was seriously annoyed by the noise from the mortars. He was allowed an injunction, because the defendant had gained no prescriptive right inasmuch as the plaintiff had been unable to bring action until actual damage was suffered. No action on the case would lie without proof of substantial loss. The only possible distinction between the two cases — that in *Dana* v. *Valentine* the nuisance was always apparent, while in the English case it could not be perceived until the actual damage occurred — seems an unsatisfactory refinement.

The recent English decision in *Roberts* v. *Gwyrfai District Council*, [1899] 1 Ch. D. 583, would then seem revolutionary. The plaintiff had a natural right to the uninterrupted flow of a stream by his land. The defendant wrongfully altered the flow of water as it passed the plaintiff's tenement. No actual damage resulted, yet it was held that plaintiff's common law right had been infringed and the wrongdoer was enjoined from further interference. *Sturges* v. *Bridgman* was not brought to the attention of the court and the question was dealt with somewhat summarily. In following the accepted American rule it reached a wholesome result. While it is hard for one who at present does not wish to use his land in a certain way to be deprived of its future use, it is harder still for one committing the nuisance to be driven out of business simply because a neighboring proprietor decides to change his mode of occupation. It would be in the power of the latter to destroy at his option permanent and extensive works. Public policy would seem to require an exception to the rule that an action on the case requires substantial damage when a property right has been infringed for more than twenty years, though the damage has been merely nominal. 12 HARVARD LAW REVIEW, 284.

TENDENCIES FROM YEAR TO YEAR. — It is well settled law that if a tenant for years holds over at the end of his term, the landlord has the option of treating him as a trespasser, or as a tenant from year to year where such tendencies are allowed. This is founded on a supposed agreement between the parties, implied from the mere fact of holding over. *Conway*